GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Tribal Welfare Department - East Godavari District – Revision Petition filed by Sri Kalla Babu Rao and Kalla Veerabhadra Rao of East Godavari District with regard to Acs.5.00 cts in Sy.No.11/2 and Acs.2.12 cts in Sy.No.11/1 of the petitioner situated in Putigogulapadu (V), Addateegala (M) East Godavari District against the orders of the Additional Agent to Government, Rampachodavaram, East Godavari District dt.26.6.2004 in CMA No.33 of 2003 – Dismissed - Orders – Issued.

SOCIAL WELFARE (TW.LTR-2) DEPARTMENT

G.O.MS.No. 105 Dated: 16-11-2016
Read the following:-

1. Revision Petition filed by Sri Kalla Babu Rao and Kalla Veerabhadra Rao, East Godavari District dated:20.12.2004.
2. Govt.Memo.No.140/LTR-2/2005-1, dt.29.01.2005.
3. From the Project Officer, ITDA and Additional Agent to Government, Rampachodavaram, East Godavari District in RC No.T8/Revision/2007 Dated.19.6.2007.
4. Govt.Lr.No.140/Ltr-2/2005, Dated: 30.04.2016.

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ORDER:-

In the reference first read above, Sri Kalla Babu Rao S/o.Late Sri Samba Murthy R/o.Chillangi, Kirlampudi (M), East Godavari District and Kalla Veerabhadra Rao S/o.Late Samba Murthy R/o.Prathipadu (V&M) East Godavari District has filed a Revision Petition before the Government with regard to Acs.5.00 cts in Sy.No.11/2 and Acs.2.12 cts in Sy.No.11/1 of the petitioner situated in Putigogulapadu (V), Addateegala (M) East Godavari District against the orders of the Additional Agent to Government, Rampachodavaram, East Godavari District dated:26.6.2004 in CMA No.33 of 2003.

2. The Government, in the reference 2nd read above, have admitted the said Revision Petition and requested the Collector, East Godavari District, Kakinada to furnish the parawise remarks and connected records on the Revision Petition.

3. In the reference 3rd read above, the Project Officer, ITDA, Rampachodavaram, East Godavari District has furnished parawise remarks along with the connected records.

4. The claim of the revision petitioner is that the Government to stay all the further proceedings including dispossession of the petitioner from land of Ac.5.00 cts in Sy.No.11/2 and Acs.2.12 cts in Sy.No.11/1 situated at Putigogulapadu (V), Addateegala (M), East Godavari District and to pass orders allowing their revision petition.

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5. The main grounds of this Revision Petition are:

1. The orders of the 1st and 2nd respondents failed to consider the very fact of maintainability of the LTRP instituted by the 4th and 5th respondents as they do not belong to schedule tribe community and as a result of that they are not entitled to file the said petition. The documents filed along with the revision go to show that they are non-tribals and they have been styling themselves as tribes and instituted the proceedings against the petitioners herein.

2. The findings of the 1st respondent that the sale agreement between the petitioners father and his vendor Smt Papayamma prior to the commencement of the regulation 1 of 1970 is not genuine is in direct conflict with the law laid down by this Hon'ble Court in an unreported decision in W.P.No.1192 of 1005dated 25.07.1995.

3. The 1st respondent has not applied his mind and failed to appreciate the contentions raised on behalf of the contesting parties in correct perspective

4. The 1st respondent having held that the 4th and 5th respondents have failed to establish their right to thepetition schedule lands ought not to have held that the land belongs to the government and the further direction given by him to evict the petitioners herein from the lands and assign the same to the 4th and 5th respondents is without jurisdiction etc.

6. The facts are that, the respondent No.4 and 5 herein filed a suit in O.S.No.2 of 1999 on the file of the court of the sub divisional magistrate cum mobile court, Rampachodavaram against the revision petitioners herein.

7. The Respondent 4th and 5th having failed in all their attempts outside the court and inside the court of law, again started their attempts to grab the petitioners property by filing a petition under AP Schedule Areas Land Transfer Regulation (Regulation 1 of 1959 as amended by Reg.1 of 1970 in L.T.R.P.No.75 of 2003 before the 2nd respondent.

8. The 2nd respondent i.e. Special Deputy Collector, after considering the rival contentions and the documentary evidence produced by both the parties, came to a conclusion that the petitioners possession and enjoyment of the petition schedule land is not violation of the provisions of registration 1/59 as amended by 1/70.

9. Accordingly the 2nd respondent i.e. Special Deputy Collector by his order dated 09.10.2003 dismissed the LTRP and confirmed the petitioners right on the petition schedule land.

10. Aggrieved by the orders of Special Deputy Collector, 4th, 5th respondents filed an appeal before the respondent no.1 i.e Agent to Government.

11. The Agent to Government allowed the appeal by setting aside the

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orders of the Special Deputy Collector, and directed to restore the lands to the Government and further to assign them to the respondents.

12. Aggrieved by the said order the Revision petitioners filed the present revision petition before the Hon'ble Government as per the orders of H.C of AP in WP 15580/2004, dt.16.11.2004.

13. Now as per the said judgment even though attempt was made by the Government to dispose of the said revision within 8 weeks after the revision was numbered for receiving lower court bundle and for receiving the parawise remarks of subordinate authorities, lot of time consumed. There after the revision petitioner also used to seek time for production of the record. Anyway the matter having been taken up for final hearing in obedience of the directions of the Hon'ble High Court. The case was adjourned several times due to appellants unreadiness in submission of arguments. Finally the matter was taken up for final hearing on 14.5.2016 and after hearing the revision petitioner the same is reserved for judgment.

14. The point for consideration is whether the order of Additional Agent to Government where by the order of Special Deputy Collector was set aside and further ordered for eviction of appellants of the revision petitioners herein from the petition schedule land is sustainable under law or liable to be interfered with?

15. In as much as the sale deed was on 8.6.1970 which was subsequent to 3.02.70. The said sale deed by a non-tribal in favour of called Sambmurthy the father of revision petitioners herein is hit under Sec 3(2)(a) of AP SA LT Regulation 1/70. The patta passbooks and land revenue receipts in favour of petitioners father though were granted under ROR Act. There are to be just brushed aside in view of overriding class in Sec 3 (1)(a) and 3(2)a of AP SALT regulation which says specifically that notwithstanding anything in any enactment/rule of law in force & any transfer of immovable property in Agency tracts is and void unless it is in favour of a schedule tribe.

16. In view of the overriding class the sale deed dated 8.06.70 and the so called patta pass book and land revenue receites are hit and they can't be given any weightage if the same are given any weightage it would amount to legalizing illegal things and one can't go against the object and intendment of the main legislation.

17. Therefore the Government is of view that the patta pass book and the revenue receipts would be of some use if the person granted the same has valid right and title.

18. The so called sale agreement set up by the revision petitioners is nowhere to be seen in the sale deed dated 8.06.70. Hence the sale deed is and void and the immovable property subject matter of the same can by Government by ejecting the Revision petitioners. Similarly so far as the second item of Ac 5.00 in Sy.No.11/2 though there was a sale deed on 31.12.1969 and the same would also be hit unless permission is granted by Agent to Government/Assistant Agent to Government for purchase of the same in favour of the non-tribal by another non-tribal.

19. No permission was granted. Therefore the said sale deed is hit under regulation 1/59. More over the letter of District Collector Kakinada issued in

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R.D's No.944/1958 dated 5.02.1958 clearly proves that the land in Sy.No.11/2 measuring Ac.5.00 is ordered to be assigned in favour of Mohd.Ismail by way of a deform patta under the condition of non-alienation and the said lands can't be alienated by non-tribes much less in agency area. Therefore the said assignment is subject to a condition of non-alienation and the original assignment patta are not filed as per the proceedings of the Collector dated 5.02.1958. The subject land would be governed by the provisions of not only board standing orders but also AP Act 9/77 which is held to have retrospective effect as assigned lands are deemed to have been never alienated and never means present, past and future.

20. The full bench of Hon'ble High Court of AP has held that the said act is retrospective in operation and it is applicable to those assignments prior to the commencement of the said act. Therefore the alienation by the Mohd.Ismail the assignee who was said to have been granted deform patta, is illegal and hit by Sec 3 and 4 of AP Act 9 of 1977 (AP assigned lands prohibition of transfer act 1977).

21. Therefore for want of permission of Government authorities for alienation. The sale in favour of the father of petitioners is hit. More so in view of the fact that the subject land is in agency tracts.

22. Therefore the order of ejection of revision petitioners from the lands measuring an extent of Ac.2.12 cts and Ac.5.00 situated in Sy.No.11/1 and 11/2 is perfectly justified and valid under law because the land can be granted in favour of an eligible tribe for whose benefit the APSALT Regulation is meant. More over the Hon'ble SC in Samatha Vs State of AP has clearly held that the lands in Schedule area shall be meant for the possession and enjoyment of tribes only and a non tribal would entitle him to forgo the land assigned to him if any.

23. The Government gave several opportunities for filing any record to substantiate that they have permission for getting alienation from the Government authorities but they failed to do so. Despite the grant of several adjournments.

24. Therefore the Government does not find any mistake in the order of the learned Additional Agent to Government, East Godavari District.

25. In view of the above facts and circumstances the government is of the considered view that the above appeal is devoid any merits and hence it does not warrant any interference.

26. In the result the revision petition is dismissed and the Subordinate authorities are directed to eject the petitioners from the petition schedule land immediately if their order is not yet implemented and to allot the same to the eligible tribal's and to 4th and 5th respondents if they are also found eligible.

27. The Additional Agent to Government and Project Officer, ITDA, Rampachodavaram, East Godavari District is requested to take necessary action in the matter accordingly.

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28. The original record bearing CMA No.33/2003 LTR No.75/2003 received from the Additional Agent to Government, Rampachodavaram, East Godavari District through reference 3rd read above, is returned herewith and he is requested to acknowledge the receipt of the same immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

R.P.SISODIA
PRINCIPAL SECRETARY TO GOVERNMENT (TW)

To:
The Collector & Agent to Government, Kakinada, East Godavari District.
The Additional Agent to Government & Project Officer, ITDA Rampachodavaram, East Godavari District.(w.e.)
The Special Deputy Collector, (Tribal Welfare) Rampachodavaram, East Godavari District.
Copy to:
Sri N.Siva Reddy, Advocate, 5-9-22/26, Adarshnagar, Hyderabad – 63.
Sri Kalla Babu Rao S/o.Late Samba Murthy, R/o.Chillangi (V), Kirlampudi (M), East Godavari District.
Sri Kosuri Appa Rao & Sri Kosuri Satyanarayana, S/o. Balaraju, R/o.Malayyapakalu, Addateegala (M), East Godavari District.
The P.S to Hon'ble Minister (SWE & TWE) for information
The P.S to Principal Secretary to Government (TW)
SF/SC.

// FORWARDED:: BY ORDER //

SECTION OFFICER